

Special Civil Application No 6927 of 1987

Date of decision: 02nd February 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

VIJYABEN A. DOSHI

vs

COMPETENT AUTHORITY & DY. COLLECTOR (ULC)

Appearance:

Shri J.R.Nanavaty, Advocate, for the Petitioner.

Shri D.N.Patel, Assistant Government Pleader, for the Respondents.

Coram : MR.JUSTICE A.N.DIVECHA
(02nd February 1996)

ORAL JUDGEMENT

The order passed by and on behalf of the Competent Authority at Rajkot (respondent No 2 herein) on 28th March 1984 under section 8 (4) of the Urban Land

(Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No 2 herein) on 9th November 1987 in Appeal No.Rajkot-807 of 1984 is under challenge in this petition under Article 227 of the Constitution of India. By his impugned order, respondent No.1 declared the holding of the petitioner to be in excess of the ceiling limit by 3249.76 square metres.

2. The facts giving rise to this petition move in a narrow compass. The present petitioner is the heir and legal representative of one Vijayaben Adityalal Doshi (the deceased for convenience). She appears to have breathed her last some time on or about 1st November 1982. She was in occupation and possession of certain properties within the urban agglomeration of Rajkot when the Act came into force. She therefore filed her declaration in the prescribed form under section 6 (1) of the Act. That form was duly processed by respondent No.1. After observing the necessary formalities according to law, by his order passed on 28th March 1984 under section 8 (4) thereof, respondent No.1 declared the holding of the deceased to be in excess of the ceiling limit by 3249.76 square metres. Its copy is at Annexure-B to this petition. That aggrieved the present petitioner. She carried the matter in appeal before respondent No.2 under section 33 of the Act. It came to be registered as Appeal No.Rajkot-807 of 1984. By his order passed on 9th November 1987 in the aforesaid appeal, respondent No.2 dismissed it. Its copy is at Annexure-C to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Article 227 of the Constitution of India for questioning the correctness of the order at Annexure-B to this petition as affirmed in appeal by the appellate order at Annexure-C to this petition.

3. Learned Advocate Shri Nanavaty for the petitioner has urged that constructed properties were incorrectly included in the holding of the petitioner contrary to the binding ruling of the Supreme Court in the case of MEERA GUPTA v. STATE OF WEST BENGAL reported in AIR 1992 SUPREME COURT at page 1567.

4. It is not necessary to examine the merits of this case on the basis of the aforesaid contention urged before me by learned Advocate Shri Nanavaty for the petitioner for the simple reason that by her conduct the petitioner has become disentitled to claim any relief from this court.

5. On behalf of the respondents, an affidavit-in-reply has come to be filed by respondent No.1 herein. It has specifically been averred therein that the petitioner has been guilty of flouting the order of interim relief passed by this court in this matter on 29th November 1988. By the aforesaid order of interim relief passed by this court, the petitioner was put to condition not to make any construction over the land in dispute nor would change its user nor part with its possession or would transfer it in favour of anybody. In para 5 of the affidavit-in-reply, details are given as to what area of land is transferred in favour of which person. It has also been pointed out in para 6 thereof that such transfer is effected by means of a sale agreement executed on a non-judicial stamp paper of Rs.10 each. It has also been mentioned in para 7 of the affidavit-in-reply that on the lands shown at serial Nos.2, 6, 7, 8 and 12 in para 5 thereof buildings have been constructed by the purchasers of the said lands. This would certainly amount to flouting the condition imposed by this court while granting the interim relief on 29th November 1988.

6. It is true that in her rejoinder affidavit the petitioner has come out with a case that she has not transferred any land in favour of anyone. She has also specifically stated in her rejoinder affidavit that no sale deed has come to be executed by her in favour of anyone. Technically she might be right that no property is transferred in favour of anyone as such transfer has not taken place in accordance with the relevant provisions contained in the Transfer of Property Act, 1882. However, the fact remains that no mention is made in the rejoinder affidavit about buildings having been constructed on certain lands by the persons whose names are mentioned in para 5 of the affidavit-in-reply. Similarly, it has been clearly averred in para 6 thereof that all such transfers have been made by means of sale agreements executed on non-judicial stamp paper of Rs.10 each. This part of the affidavit-in-reply has not come to be denied. The denial contained in the rejoinder affidavit can be said to be vague.

7. It thus becomes clear that in contravention of the condition imposed by this court while granting the interim relief by its order passed on 29th November 1988, the petitioner has allowed the user of the vacant land to be changed and also by allowing constructions to spring on them during the period this petition remained pending before this court. By such conduct, the petitioner has become disentitled to claim any relief from this court

even if she has any good case in this petition. I however make it clear that the petitioner's case has not been examined on merits.

8. In view of my aforesaid discussion, I am of the opinion that the petitioner is not entitled to claim any relief from this court by her conduct during the pendency of this petition.

9. In the result, this petition fails. It is hereby rejected. Rule is discharged with no order as to costs.

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